(2012) 10 P&H CK 0149

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 17866 of 2012 (O and M)

Eastern Medikit Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1)(c), 10(3), 29

Citation : (2013) 169 PLR 48 : (2013) 1 SCT 351

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashok Aggarwal, with Mr. Sumeet Goel and Mr. Mukul Aggarwal, for the Appellant; Roopak Bansal, A.A.G., Haryana and Mr. Sanjay Tangri, Advocate for respondent No. 5., for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The management has approached this court impugning the order dated 1.8.2012, Endst. Dated 7.8.2012 (Annexure P-1), whereby dispute has been referred to Industrial Tribunal, Gurgaon (for short, ''the Tribunal'') u/s 10(1)(c) of the Industrial Disputes Act, 1947 (for short, ''the Act'') for adjudication and the order dated 1.8.2012, Endst. Dated 7.8.2012 (Annexure P-2) whereby in terms of power exercised u/s 10(3) of the Act, the Governor of Haryana was pleased to prohibit continuation of lock-out resorted to by the management. Learned counsel for the petitioner submitted that in terms of the provisions of the Act, the appropriate government does not have any adjudicatory power to decide any dispute on merits. In the present case, the stand of the employees'' union was that there is a lock-out, whereas the stand of the management was that there is an illegal strike, but still the government thought it appropriate to refer only as to whether the lock-out by the management is legal and justified. The question referred presupposes that there is a lock-out declared by the management and its legality only has to be gone into by the Tribunal. During the course of proceedings before the authorities under the Act, the petitioner had placed on record the material, which established that in fact the management never declared a lock-out, rather, it were the workmen who had been resorting to stoppage of work by adopting various means. Once the stand taken by the management and the workmen before the authorities under the Act was different, namely, it is strike or the lock-out, the appropriate government could not assume jurisdiction of adjudication and refer the dispute partially. The Tribunal cannot go beyond the question referred. The issue as to whether there is strike or lock-out can be decided only after both the parties plead their case before the Tribunal after leading evidence.

2. It was further submitted that while making reference, the appropriate government had assumed certain facts, which is beyond its jurisdiction. In view of the language used in the question referred, the Tribunal cannot even go into the question as to whether the lock-out was result of an illegal strike as any strike has to be legal and justified. The government can refuse to refer a question to the Tribunal only if it finds that the grounds raised by the party concerned are so frivolous that it is not worth reference but the case in hand is not of that kind as it has been established by various communications addressed to the authorities during pendency of the proceedings that in fact the workmen had resorted to illegal means to put the management at loss. Though it is sought to be claimed that the management declared lock-out on 18.5.2012, but the fact that on that very day as per the settlement, wages were paid to the workmen, is not in dispute. If the management had declared lock-out on 18.5.2012, there was no question of declaring holidays from 26.5.2012 to 30.5.2012. In support of his arguments, reliance was placed upon Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, ; Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd. and another, AIR 1979 SC 1356; M/s Indian Tourism Development Corporation v. Delhi Administration and others, ILR (1982) Delhi 535; Syndicate Bank and another Vs. K. Umesh Nayak, ; M/s Modistone Ltd. v. The Presiding Officer, Industrial Tribunal Punjab at Chandigarh and another, (1996-3) PLR 496 Hal Employees'' Union Vs. Presiding Officer and Another, ; Moolchand Kharati Ram Hospital & Ayurvedic Research Institute v. Labour Commissioner and others, 1998-III-LLJ (Supp.)1139 and Moolchand Kharati Ram Hospital K. Union v. Labour Commissioner and others, 2000-II-LLJ 1411.

3. On the other hand, learned counsel for the State submitted that there was no dispute raised by the management with the workmen with regard to their resorting to the illegal means of strike. Industrial dispute can be for different reasons. The issue regarding strike by the workmen was never raised by the management before the Labour-cum-Conciliation Officer. Once no dispute was raised by the management with the workmen, in fact, no industrial dispute will exist to that extent, namely, the strike. In support of the argument, reliance was placed upon The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, Fedders Lloyd Corporation (Pvt.) Ltd. v. Lt. Governor, Delhi through Under Secy. (Labour), Delhi and others, AIR 1970 Delhi 60 and Union of India and others Vs. Deep Chand Pandey and another, . He

further submitted that endeavour of the State in the present case was that the industrial unit, where 1,100 workers were working, should remain in production as it is the question of livelihood of the families of the aforesaid low paid employees, but the attitude of the management was not positive. The plea raised by it before the Labour-cum-Conciliation Officer was of financial difficulty. The management was not even adhering to the terms of the earlier settlement arrived at with the workmen. Even if the dispute had been referred to the Tribunal, the order prohibiting strike or lock-out can still be passed. In support of the arguments, reliance was placed upon Hotel Hans Pvt. Ltd. v. Delhi Administration and others, 1995-III-LLJ (Suppl.) 207.

4. Learned counsel for the State further submitted that as far as the case in hand is concerned, as the management had not paid wages to the workmen in terms of the settlement arrived at in the year 2009, they had approached Labour-cum-Conciliation Officer. It is in this process that the management showed its adamant attitude and closed down the unit. In terms of Section 10(1) of the Act, even apprehended dispute can also be referred to. Once a dispute has been referred to, the merits thereof cannot be gone into at the stage of challenge to the reference order. It can be gone into only by the reference court. In a challenge to the reference order, the court can only go into the decision making process. The court can see whether there was some prima facie material for referring or refusing to refer a dispute. The court cannot direct reference of a dispute, rather, the matter can only be sent back to the government for appropriate consideration. The proceedings before the Labour-cum-Conciliation Officer during conciliation have been referred to, to state that during the process the management always had a non co-operative attitude.

5. He further argued that for the purpose of reference, the situation has to be seen on the date when the reference is made and not at any time prior or subsequent thereto. In the present case, at the time when the dispute was referred, the material before the appropriate government was not sufficient to opine that there was strike by the workmen, the legality or justification whereof is required to be examined by the Tribunal. In support of the argument, reliance was placed upon M/s Village Papers Pvt. Ltd. v. State of Himachal Pradesh and others, 1993 Lab. I.C. 99. He further submitted that in the present case, the stand of the employees'' union in the written statement is that the workmen were ready and are still ready and willing to work. The same clearly belies the plea sought to be raised by the management that the workmen are on strike. Learned counsel further submitted that had there been any strike, the management could have taken action against any of the employee for resorting to illegal strike. The same having not been taken, clearly establishes that in fact there was no strike. The object of the management is only to delay the matter so that they could continue with their illegal lock-out in which the ultimate sufferers are only the workmen.

6. Learned counsel for the employees'' union submitted that the term ''strike'', as

defined under the Act, means cessation or refusal to work by the workmen, which is totally missing in the present case, as the definite stand of the workmen at every stage was that they are ready and willing to work. They had been visiting the factory ever since the management declared a lock-out. It has been so found even by the inspection team sent by the Labour Department, when no representative of the management was found. The factory was found locked and almost all the workmen were present outside the gate. Even in reply to the petition as well, the stand of the workmen is that they are still ready and willing to work as and when so directed as it is the question of their livelihood. Lock-out, as defined in the Act, is not permanent closure of a unit, rather, it is temporary. The mere fact that there is no electric connection in the plant from 18.5.2012 due to nonpayment of electricity dues, itself shows that intention of the management was to close the manufacturing activities. The fact that electric connection was disconnected on account of non-payment of electricity dues is not denied. The plea sought to be raised by the management that it was only upto 10.5.2012 that everything was normal and thereafter on account of strike by the workmen, the management suffered loss and on account of that power connection was disconnected, is incorrect.

7. Learned counsel further referred to various letters written by the management to Labour-cum-Conciliation Officer during conciliation proceedings specifically taking the plea that on account of financial crunch in the last 3 years, they had not been able to adhere to the settlement already arrived at with the workmen and had ultimately committed to clear the wages on 17.5.2012. It was for the first time on 11.5.2012, a plea was sought to be raised that the workmen are on strike, finished goods worth Rs. 85,00,000/- are lying in the factory, which were not permitted to be disposed of, as a result the management may not be able to pay wages to the workmen. Along with the aforesaid communication dated 11.5.2012 (Annexure-P6), learned counsel for the employees'' union referred to pleading in paragraph 2 of the petition, where it is stated that finished goods worth ` 4 crores lying in the factory, were not being permitted to be disposed of. The submission is that contradiction in the stand is apparent. Though the workmen were on strike from 10.5.2012 onwards but finished goods increased from Rs. 85,00,000/- to Rs. 4 crores. It clearly belies the stand of the management that there was any strike. In fact, the documents annexed with reply as Annexure R5/6 clearly establish that upto 17.5.2012, the unit was in production and from that day onwards, it could not as the electric connection itself was disconnected.

8. Learned counsel for the employees'' union further submitted that the stand taken by the management is that on 18.5.2012, wages were paid to the workmen. If the plea of the management is taken that from 10.5.2012, the workmen had gone on strike, there was no question of the management paying wages to them on 18.5.2012. In fact, it is a case of lock-out only and the reason thereof is financial crisis with the management. To solve that, the management should take appropriate steps and not play with the lives of low paid employees.

There is no material produced either during the conciliation proceedings or before this court to show that the workmen ever refused to work. The government has the authority to decide whether there is strike or lock-out for the purpose of reference of a dispute as it is the opinion of the government on the basis of which a reference is made u/s 10 of the Act. The opinion has to be formed on the basis of some material on record. Reference of a dispute should always arise out of the pleadings or stands taken by the parties before the competent authority. In support of his arguments, learned counsel relied upon The State of Madras Vs. C.P. Sarathy and Another, Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, and The Secretary, Indian Tea Association v. Ajit Kumar Barat, 2000 (2) SCT 14. Learned counsel further submitted that till such time the Tribunal decides the referred question, the lock-out can always be prohibited. In support of the argument, reliance was placed upon a judgment of this court in C.W.P. No. 14650 of 2002--JCT Electronics Ltd. v. Labour Commissioner, Punjab and others, decided on 29.7.2004.

9. Heard learned counsel for the parties and perused the record.

10. The question referred by the appropriate government is: "Whether the lock out by the management in their five units is legal and justified or not? If not, to what relief the workers are entitled to?"

11. Before this court proceeds to deal with the issues raised by both the parties on merits, it would be relevant to extract the statement made by the employees'' union in the written statement filed by them:

... It is vehemently denied that the workers have not allowed the dispatch of finished goods. The petitioner company may lift the finished goods immediately. The workers have never gone on strike as has been found by the appropriate government. If the contention of the petitioner is correct then the workers through the answering respondent undertake that one and all workers shall be present to perform their duties immediately, today, tomorrow or any day and the petitioner company may kindly be called upon to run the factory immediately. It is vehemently denied that the ingress and egress of the management has been obstructed.

12. The petitioner-company in the present case employed about 1,134 permanent workers in its five units located at Gurgaon. On account of dispute having arisen between the management and the workmen, efforts for conciliation were made by the Labour Department. The conciliation proceedings commenced on 22.3.2012, which resulted in failure, as is noticed in the proceedings of 11.6.2012. As a consequence thereof, the appropriate government vide order dated 1.8.2012 referred the dispute to the Tribunal. The stand of both the parties, as is noticed in the proceedings undertaken before the Labour-cum-Conciliation Officer, is extracted below:

Dated 8.5.2012

Present:

1) Sh. Jitender Shukla, Vice President, Union representative.

2) P.S. Rawat & S.C. Pant Management representative.

Statement of Shri S.C. Pant

Stated that the company is in financial trouble, regarding this we are giving a request letter to LOCO vide which a request has been made that the disbursement of salary may be conducted between 15.5.2012 to 17.5.2012. A request was made for granting one opportunity.

Sd/- (S.C. Pant)

Sd/- (L.I.-I, Gurgaon)

Statement of Sh. Jitender Shukla, Vice President Union representative.

Stated that our union had a meeting with M.D. Eastern Medikit Ltd., during which M.D. requested for disbursement of salary on 17.5.2012, we agree on this. If the management does not disburse the salary by the time, the action as per rules may be taken.

Sd/- (Jitender Shukla)

Sd/- (L.I.-I, Gurgaon)

Dated 18.5.2012

Present:

1) Sh. Sanjay Malik, President Union.

2) Sh. S.C. Pant, Management representative.

Sh. S.C. Pant told that the salary of worker would be credited to the accounts by 4.00 PM on 18.5.2012.

Sd/- (S.C. Pant)

Sd/- (Sanjay Malik)

Sd/- (L.I.-I, Gurgaon)

The issue was again taken up with the Management at 4.00 PM and they told that the salary of all workers for April, 2012 has been transferred to their accounts which was agreed to by all worker representative and told that the salary of April, 2012 have been deposited in their accounts.

Sd/- (S.C. Pant)

Sd/- (Om Parkash)

Sd/- (L.I.-I, Gurgaon)

Dated 21.5.2012

Both respondents are present. Management told that they should be given time for reconciliation till tomorrow, on the request of Management the reconciliation proceedings are fixed for 11.00 AM on 22.5.2012 and directions are being issued that Senior Officer from Head Quarter must participate in reconciliation during next meeting.

Sd/- (Sanjay Malik)

Sd/- (L.I.-I, Gurgaon)

Dated 22.5.2012

Both respondents are present.

Sh. S.C. Pant, Management representative told that the Sr. Officer are out of station due to some reasons and hence are not present the request was made to grant them the last opportunity, so as to be present on the next date with their senior officer. The request was accepted and the next date was fixed for 2.00 PM on 23.5.2012.

Sd/- (S.C. Pant)

Sd/- (Sanjay Malik)

Sd/- (L.I.-I, Gurgaon)

Dated 23.5.2012

Both respondent are present.

Sh. S.C. Pant, Management representative told that no senior officer from Head Office is present and only a written statement has given that the dues would be cleared within 6 to 7 weeks with the condition that dispatch will be allowed at the earliest so that the balance dues may be cleared within the stated time.

Sd/- (S.C. Pant)

Worker representative told that management is adopting delay practice and are creating the troubles deliberately and told that no responsible person from Head Office had signed this letter it appears that this letter is fabricated and baseless. In future for any correspondence to the name and designation should be there along with signature.

Sd/- (Sanjay Malik)

During the reconciliation meeting and after hearing both sides, it seems that the management does not want any reconciliation deliberately and desires to lockout the plant, whereas all workers are eager to work whereas management does wish to get the work done. Hence, it is recommended that the legal action may be recommended against the management and the report be sent to the

Government.

Sd/- (S.C. Pant)

Sd/- (Sanjay Malik)

Sd/- (L.I.-I, Gurgaon)

Dated 25.5.2012

Present

1) Representative of union

2) Sh. K. Bose and Miss Heena, Manager (Head Office) Representative of Management.

The reconciliation of both sides was held under the Chairmanship of DLC-I, Gurgaon and Labour Inspector, Gurgaon-I and LOCO-I, Gurgaon also participated.

Management representative told that they should be given two days time i.e. till Tuesday to clear the balance dues and to implement the settlement. Management told that till 30.5.2012 i.e. Wednesday there would be holiday in the factory as the Management has decided on account of the electricity being disconnected.

Sd/- (S.C. Pant)

Sd/- (K. Bose)

Sd/- (Heena)

Sd/- (Name not clear)

Worker representative told that they agree with the above statement of Management and requested to DLC-I, Gurgaon to sort out their problem at the earliest.

On the request of Management the next date in this complaint is being fixed on 30.5.2012 at 3.00 PM with the directions that both sides would be present on the fixed date and time in this office.

Sd/- (S.C. Pant)

Sd/- (K. Bose)

Sd/- (Heena)

Sd/- (Sanjay Malik)

Sd/- (L.I.-I, GGN)

Sd/- (LOCO-I, GGN)

Sd/- (DLC-I, GGN)

Dated 30.5.2012

Present,

1) Representative of union

2) (None from Management)

Management is absent from reconciliation, due to which the complaint/ settlement could not be settled. It seems that the Management deliberately do not want to implement the settlement in toto. Hence, LOCO-I, GGN is directed to take the action u/s 29 of I.D. Act and intimate this office about the action taken report.

Dated 8.6.2012

As per directions issued by ALC (NCR) Gurgaon to the officers of Factory Wing as well as Labour Wing, all units belonging to M/s. Eastern Medikit Ltd. were inspected and during the course of inspection it was found that all workers present in the units and the units were found lack of facilities of electricity, water, diesel, and the report in this regard has already been submitted to ALC (NCR) Gurgaon. Simultaneously, regarding notices for lockout were given to the managements which were received by the Security Guards found present in the units. Next date is fixed for 11.6.2012 for appearance of the management.

Sd/- DLC

Sd/-

Dated 11.6.2012

Both respondents are present.

Management has given their written reply on 11.6.2012 and have stated that the workers are on illegal strike and have stopped the finished goods and workers have created an atmosphere of terror.

Workers told that all workers are present on duty and are ready to work, they have not stopped the dispatched material, whereas the management have stopped the arrangement of water, Diesel, electricity in all factories and management is making false allegation on them whereas the management has gone for illegal lockout.

Sd/- (Sanjay Malik)

Sd/- (Santosh Pandey M.R.)

Sd/- (LOCO-I, GGN)

After hearing both sides, it appears that the Management has closed the factory which reflects an illegal lockout. Hence, a case of illegal lockout by Management be recommended as unconstitutional. Report be sent to DLC-I, Gurgaon.

Sd/- (Sanjay Malik)

Sd/- (Santosh Pandey M.R.)

Sd/- (LOCO-I, GGN)

13. Various communications, which have been addressed by the petitioner to the Labour-cum-Conciliation Officer, have been placed on record with the writ petition. A perusal of letter dated 9.4.2012 (Annexure-P4) shows that the stand taken by the company, inter-alia, was that presently the company is in a financial crunch and going through a bad phase. Due to lack of funds for the raw material, even the production has also suffered. Co-operation was sought from the workers and staff as the bad phase may be over in the times to come. In the communication dated 7.5.2012 (Annexure-P5), the stand regarding financial crunch was reiterated. It was stated that the company is trying to improve its cash flow. Salaries for the months of March and April are still payable. It was stated that the company will not be able to clear the wages by 10.5.2012, but will certainly clear wages for the month of April, by 15th to 17th of May, 2012. For the first time, in letter dated 11.5.2012 (Annexure-P6), a stand was taken by the petitioner-company that due to hindrance caused by the union by stopping the supply of finished goods into the market, its production has been affected. The company will not be able to distribute the wages as per the commitment made. The finished goods worth Rs. 85,00,000/- lying in the factory were only meant for payment of wages. The stand regarding the workers being on strike was reiterated vide letter dated 14.5.2012. Vide communication dated 21.5.2012 (Annexure-P7), the petitioner even stated that despite poor financial condition, it had been able to manage distribution of salaries to the workmen on the committed date. The workmen are not allowing the finished goods worth Rs. 3 crores to be removed from the factory. The petitioner has not been able to run its plant because of stoppage of despatch of finished goods, shortage of electricity, non-availability of diesel etc. In the communication dated 23.5.2012, a stand was taken that the union be impressed to let the company remove the finished goods worth Rs. 3 crores, the payment of which will be available in four weeks and endeavour shall be made to clear workers'' dues in six to seven weeks. In the letter dated 29.5.2012, it was stated that the workmen had stopped working since 10.5.2012.

14. First issue which is required to be considered is as to whether the workmen had stopped working from 10.5.2012. The definite stand of the management is that from 10.5.2012, the factory is closed. As against that, the stand of the workmen is that the factory was in production upto 17.5.2012, when it was closed on account of disconnection of power supply due to non-payment of electricity dues. In addition thereto, the employees'' union had also placed on record documents (Annexure R5/6) showing production in the factory from 11.5.2012 to 17.5.2012. Reference was also made to the statement made by the petitioner in its letter dated 11.5.2012 (Annexure-P6), wherein it was mentioned that finished goods worth Rs. 85 lacs were lying there, whereas in the

subsequent communication dated 21.5.2012 (Annexure-P7), it was stated that finished goods worth Rs. 3 crores were lying in the unit and in the writ petition in paragraph 2, it is alleged that finished goods worth almost Rs. 4 crores lying in the godown are not being allowed to be despatched. The quantity/value of the finished goods increased only because of production in the unit from 11.5.2012 to 17.5.2012. It was admitted by the petitioner in the letter dated 21.5.2012 (Annexure-P7) that due to shortage of electricity and non-arrangement of diesel and unpaid dues of the Electricity Board, the petitioner is not able to run its plant. An inspection of the unit was carried out on 8.6.2012 in terms of the order dated 7.6.2012 (Annexure R5/2) of the Additional Labour Commissioner and it was reported that all the workmen were sitting idle and the situation was continuing since 18.5.2012. None was available on behalf of the management and when called, there was clear refusal. The team was informed that if any notice is to be served, the same may be handed over to the security person. There was no electricity in the premises as power supply had been disconnected on account of non-clearance of electricity dues. There was no diesel for running the unit.

15. In addition thereto, there is a definite stand taken by the management in paragraph 8 (xxxi) of the writ petition that wages were paid to the workmen on 18.5.2012 after borrowing the money despite there being illegal strike. The stand does not sound to reason as if there was strike continuing, normally the management will not pay wages to the workmen. Secondly, on 18.5.2012, the matter was considered even during conciliation, where representative of the petitioner-company informed that salary of the workers would be credited in their accounts by 4.00 PM on that day itself and later on, it has been recorded on the same date that when the matter was taken up at 4.00 PM, it was informed that salary of all the workmen for April, 2012 had been credited in their accounts, which was not disputed by the representative of the workmen. The issue regarding the workmen being on strike and in view of the payment of wages by the company, they be directed to rejoin the duty back was not raised by the management during conciliation proceedings. Further, the company itself had issued a notice on 25.5.2012 (Annexure-R5/1) intimating all the employees that there would be holidays in the company from 26.5.2012 to 30.5.2012 due to non-availability of electricity. Once the workmen were on strike, apparently there was no reason for issuance of such a notice, hence, it can safely be opined that the stand of the management that the workers are on strike since 10.5.2012 is incorrect as the factory was in production till 17.5.2012 and closed thereafter for reasons other than refusal of the workers to work.

16. The order of reference is open to judicial review if it is shown that the appropriate government has not applied its mind or has not taken into consideration certain relevant facts which it ought to have taken into consideration. The entire material available has to be considered. Reference of dispute is to arise out of the material available. Any strike or lock-out has to be both legal and justified. A lock-out declared in consequence of an illegal strike

may be legal and justified. The power conferred on the appropriate government u/s 10 of the Act is discretionary and administrative in nature, though subject to judicial review. It is the gist of judgments on which reliance has been placed upon by learned counsel for the parties.

17. If the facts of the present case are considered in the light of enunciation of law on the subject and after finding that the stand taken by the management that the employees had resorted to illegal strike on 10.5.2012 to be incorrect and there being no material on record to inspire confidence on the plea raised by the management that there was refusal on the part of the workmen to work, coupled with the stand taken by them in the written statement filed before this court at the very first instance that they have no objection to the removal of finished goods from the factory and also join duties as and when asked for, in my opinion, no illegality has been committed by the appropriate government while referring the dispute pertaining to only the lock-out and not the strike, as is sought to be claimed by the management. It is not a case in which the workmen had earlier resorted to any unlawful means or indulged in any illegal activities, like violence etc. They had been resorting to their legal remedies while raising the dispute before the appropriate government and had been cooperating throughout the proceedings. For the reasons mentioned above, I do not find any merit in the present petition. Accordingly, the same is dismissed. The Tribunal is directed to strictly adhere to the schedule for disposal of reference, as has been mentioned in the order of reference by the appropriate government as it is the question of livelihood of more than 1,100 workers.